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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,239	01/27/2006	Carsten Easterbarkey	SCH-16446	8758
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EXAMINER				
ANDRISH, SEAN D				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/563,239

**Applicant(s)**

EUSTERBARKEY, CARSTEN

**Examiner**

SEAN D. ANDRISH

**Art Unit**

3672

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 - 6, 8 - 13, 15 - 22, and 24 - 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 6, 8 - 13, 15 - 22, and 24 - 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/003)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 15 July 2009 has been entered.

***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "spacers" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show how bending moments may be transmitted from the construction to the pile like device as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 - 4, 6, 8 - 12, 15 - 18, 20 - 22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by DeWitt (4,992,002).

Regarding claims 1 - 4, 6, 15 - 18, and 20 - 22, DeWitt discloses a foundation comprising: an elongate pile element (hollow elongate mandrel 10); a reinforcement member (sheath 40) surrounding the elongate pile element (10); a gap (annulus between mandrel 10 and sheath 40) is filled with cement; a junction piece (annular attachment ring 42) connects the pile-like device to a construction (collar assembly 45) located on top of the pile-like device (Figs. 2 and 3; column 3, lines 31 - 44; column 4, lines 3 - 10). Examiner notes that the bolted flange (42) of DeWitt is functionally equivalent to a screw flange. Although DeWitt is silent regarding the transmission of bending moments, the bolted connection (bolt 48) between the junction piece (45) and pile-like device inherently allows for the transmission of bending moments. Although

the bolt will fail if enough force were applied thereto, the bolt would transmit horizontal forces up until the point at which the bolt breaks. Applicant's figures do not clearly illustrate how bending moments may be transmitted from the construction to the pile-like device, so the bolt of DeWitt meets the claim limitations as best understood by the examiner.

Regarding claims 8, 9, 11, and 12, DeWitt further discloses means for increasing transfer of shear is fins (vanes 38) between the elements and the filling material (Fig. 2).

Regarding claim 10, De Witt further discloses teaches annular accumulations of grout applied to the tubes (Fig. 3; column 5, lines 40 - 48). The grout positioned between the inner and outer tubes is considered the means for increasing transfer of shear.

Regarding claim 24, DeWitt further discloses a driving head (28) (Fig. 1; column 3, line 50).

### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeWitt. DeWitt discloses all of the limitations of the above claim(s) except for more than two pile-like devices. Duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).
8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeWitt in view of Holley, Jr. (3,851,483). DeWitt discloses all of the limitations of the above claim(s) except

for at least three spacers disposed in the gap. Holley, Jr. teaches shear transmitting diaphragms (14, 15) (Fig. 2; column 3, lines 15 - 22) to maintain a space between the inner and outer tubes. It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have modified the structure as disclosed by DeWitt with the shear transmitting diaphragms as taught by Holley, Jr. to maintain a space between the inner and outer tubes.

9. Claims 19, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeWitt in view of Haynes (4,257,721). DeWitt discloses all of the limitations of the above claim(s) except for an offshore construction. Haynes teaches placing piles in deep ocean environments (column 1, lines 51 - 54). It would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have modified the structure as disclosed by DeWitt with the offshore construction of Haynes to improve the versatility and expand the range of applications of the foundation.

#### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1 - 6, 8 - 13, 15 - 22, and 24 - 26 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SEAN D. ANDRISH whose telephone number is (571)270-3098. The examiner can normally be reached on Mon - Fri, 7:30am - 5:00pm, Alternate Fri off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on (571) 272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John Kreck/  
Primary Examiner, Art Unit 3672

SDA  
7/28/2009